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No. 06-80

Supreme Court, U.S.
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In The
Supreme Court of the United States

STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, ET AL.,

Petitioners,

vs.

ALBERT ROUYEA, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal Of Louisiana, First Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Is a manual that sets forth procedures and standards for general application in the evaluation and comparison of highways, but that does not mention, address or contain information about any specific location, including the location at issue, a document that must be excluded from evidence under 23 U.S.C. § 409 in an action for damages arising from a highway defect?

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STATEMENT OF THE CASE

On the morning of September 24, 1987, Keith Rouyea was a passenger in a vehicle being driven westbound on Cornerview Road, La. Hwy. 429, in Ascension Parish, Louisiana, by James Tompkins. Where it meets New River, Cornerview Road curves sharply to the left along the bank. As he entered the sharp left turn, Tompkins lost friction and thus control of the vehicle, and his car skidded off the road. The passenger side of the vehicle struck one of a line of trees along the edge of the highway. Keith Rouyea suffered a severe closed head injury ultimately diagnosed as traumatic encephalopathy; the other passenger, James Gandolfi, was killed. The plaintiffs and respondents are Keith Rouyea's parents and curator; they brought this suit against petitioner, the State of Louisiana, through the Department of Transportation and Development ("DOTD"), the designer, builder, owner and custodian of the road where the crash occurred.

Louisiana Revised Statutes 48:35 imposes upon DOTD a duty to design, construct and maintain its highways in accordance with national standards, which consist primarily of those promulgated by the American Association of State Highway and Transportation Officials ("AASHTO") or its predecessor, the American Association of State Highway Officials ("AASHO"). Under Louisiana law, the applicable standard for determining whether DOTD negligently failed to comply is the standard in effect at the time the highway is constructed or reconstructed. See, e.g., *Hunter v. Department of Transp. & Dev.*, 620 So.2d 1149, 1151 (La. 1993). In addition, however, because this case arose in 1987, so-called "strict liability" under the former version of La. C.C. article 2317 applies. In determining whether a highway poses an

unreasonable risk of harm (or is "defective" for strict liability purposes), the factfinder may consider not only the standards in effect at the time of construction, but those in effect at the time of the accident. See, e.g., *Dill v. State*, 545 So.2d 994, 996 (La. 1989).

Cornerview Road was originally designed in 1923 and was brought into the Louisiana state highway system in 1924. The original plans for Project 77-30-01 called for a gravel road, and the curve where this crash occurred was designed as a ten and a half degree curve. (Exhibit P-11.) The next project in the area of the curve was Project 77-30-05 in 1952 (Exhibit P-13, Israel dep. Exhibit 8), in which the highway department constructed a new base and hard-surfaced the road. According to DOTD's Roadway Plan Preparation Manual (Exhibit P-15) and the Federal Highway Administration's "Designing Safer Roads" manual (Exhibit P-14), this project constituted a reconstruction of the highway because it consisted of the complete removal and replacement of the pavement structure. In 1983, Project 77-30-16 (Exhibit P-13, Israel dep. Exhibit 9) again resulted in construction of a new base and asphalt wearing courses. Again, according to both DOTD and FHWA definitions, this was a reconstruction which required that the highway be brought into compliance with then – current design standards, in this case the 1980 standards admitted as Exhibit P-15. Plaintiffs' expert also testified that the change in the centerline when the road was paved – and the resulting change in the road's geometry – constituted reconstruction that required the application of then-current design standards.

Cornerview Road in the area of this crash was defective in numerous ways. Perhaps the most significant defect was the excessive degree of curvature. The road was

originally designed in 1923 to have a ten and a half degree curve in this area (Exhibit P-11), but the curve was shown to be approximately sixteen degrees in a survey performed after the accident. (R. 633.) This curvature far exceeded not only the original design, but state and national standards that, since at least the 1940s, have provided that the maximum degree of curvature on this class of roadway should be six degrees, while 1980 standards limit curvature to five and a half degrees. (See, e.g., Exhibits P-16A, -15.)

Because of its excessive curvature, the highway was deficient in other ways, including having an excessive speed limit and inadequate lane width and superelevation. Even absent the excessive curvature, Cornerview Road failed to meet many other requirements of the applicable standards. The shoulder width was less than the 1948 requirement of five-foot shoulders and the 1980 requirement of eight-foot shoulders. (Exhibits P-16A, -15.) The slope of the roadside in several places exceeded the 1948 maximum of three to one, as well as the 1980 maximum of four to one. (Id.) And as early as 1954 it was recommended that trees should be offset fifteen feet from the roadway, while more recent standards called for a thirty-foot clear zone. The tree struck by the Tompkins vehicle was only ten feet from the edge of the asphalt. All of these conditions constituted defects of either design and construction (if DOTD originally built the road in this manner) or of maintenance (if DOTD allowed the road to degenerate to this defective condition).

The design speed of a highway is the speed that is chosen for the geometric design of the highway – pavement width, shoulder width, superelevation and horizontal curvature, for instance. Design standards call for the use

of particular design speeds for particular classes of highways. One can, however, determine the "effective" design speed of a highway by comparing the geometric characteristics of the highway to the requirements for particular design speeds. Under DOTD's 1948 standards (Exhibit P-16A), a design speed of 60 mph was required for this class of road. A DOTD design engineer testified that the speed limit of a particular highway should never be greater than the design speed. (R. 1162.) But DOTD's own retained expert testified that the design speed of this stretch of Cornerview Road was approximately 30 mph, some 15 mph less than the posted speed limit. (R. 1094-95.)

It was not disputed that the area of this curve is the only part of Cornerview Road that has never been brought up to modern standards. To the west, DOTD conceded that a full reconstruction to current standards was performed in 1955 as Project 77-30-06. (Exhibit P-47.) This project ended approximately eight-tenths of a mile from the accident site. To the east, the direction from which Tompkins approached the curve, a full reconstruction to current standards was performed in 1985 as Project 77-30-17. (Exhibit P-49.) This project ended within sight of the curve where the accident happened, only four-tenths of a mile to the east. Ironically, that project incorporated a design speed of 60 mph, while the actual speed limit in that area was 30 mph. When a motorist leaves that area, the speed limit rises to 45 mph, while the effective design speed drops to 35 mph.

Yet despite the numerous geometric defects in Cornerview Road, this tragedy could have been avoided had DOTD taken one of two simple steps: They could have removed the trees that lined the road, or they could have provided a barrier in front of the trees. If either of those

simple, inexpensive measures had been taken, the effects of this accident would have been drastically ameliorated. Instead, Tompkins' vehicle struck a fixed, unyielding tree, resulting in Keith Rouyea's catastrophic brain injuries.

In sum, at the time of this crash, Cornerview Road consisted of two relatively modern stretches of highway, connected in the middle by 1.2 miles of road that, although undifferentiated from the other areas in any way, both failed to meet the design standards set forth in the plans for its construction as a gravel road in 1923 and presented treacherous consequences for those who strayed from its twisting route. The geometric defects removed Tompkins' margin of error in negotiating the curve. The roadside defects made it impossible for him to recover once he lost control.

The plaintiffs introduced a plethora of design, maintenance and evaluation standards, from DOTD, AASHO and AASHTO. These standards dated from 1940 through the date of the accident. Among the standards introduced was Exhibit P-31, a DOTD document called the Highway Needs and Priorities manual, of which the petition complains. As was the case with its application to the Louisiana Supreme Court, petitioner did not see fit to attach a copy of this exhibit to its petition; it is reproduced here at App. 1. This manual is used to produce the Highway Needs summary, which catalogs data concerning all of DOTD's highways and compares them to standards called "minimum tolerable conditions," which are less rigorous than current design standards. (App. 3.) Exhibit P-31 is *not* the compiled engineering survey summary data of all public roads in Louisiana. Rather, it is an excerpt from the manual that the Louisiana DOTD uses to collect and

prepare that summary of data. As plaintiffs' expert testified:

> [T]he highway needs and priorities *manual* is one that tells them what to pick up and how and what to compare it with. And the highway needs and priorities – I mean the highway needs *summary* is just a physical assessment of what they have. (R. 785 [emphasis added].)

As is apparent from an examination of the document, the manual has nothing to do with any particular road or compilation of data on specific highways. (R. 710.) DOTD objected to the introduction of the manual on the basis of 23 U.S.C. § 409; the trial judge admitted the evidence after finding that the manual was not a compilation subject to protection under § 409. (R. 720.)

After a four-day bench trial in October and November of 2003, the trial court found Tompkins 85% at fault and DOTD 15% at fault, and the court fixed damages at $9,274,366.80 for Keith Rouyea and $150,000.00 each for his parents, Albert and Beverly Rouyea. (Reasons for Judgment, R. 425; Petition App. 8.)[1] Judgment was rendered on July 14, 2004 (R. 432; Petition App. 5), and the DOTD appealed (R. 435). In an unpublished opinion, the Louisiana First Circuit Court of Appeal summarily affirmed the trial court's decision. (Petition App. 1.) The DOTD then sought writs of certiorari and/or review from the Louisiana Supreme Court; that court denied the

[1] These amounts were reduced by fifty percent to reflect the fault assigned to Tompkins pursuant to the then-current version of La. C.C. article 2324, which provided for a modified solidary, or joint and several, liability.

application on April 17, 2006. (Petition App. 15.) DOTD now seeks certiorari from this Court.

ARGUMENT

1. This case does not present an issue of the application of § 409 to information compiled before its passage, because the date the information was compiled was not the basis for the Louisiana courts' decisions.

The petitioner's second question presented, concerning the temporal application of § 409, is a straw man. After quoting the trial judge's initial reaction to the offer of P-31 (Petition p. 5), petitioner concludes, "It appears that his reason for [allowing the evidence] was based on the fact that this document is dated in 1983 and Congress did not create § 409 until 1987." (Petition p. 17.) Petitioner did not make this argument in the state court of appeal (Petition App. 17-21) or the state supreme court (Petition App. 23-30), because it is not correct. Although that was the trial judge's initial reaction to the document (R. 712), he ultimately delayed deciding the issue of admissibility until the next morning. (R. 713.) The next morning, he decided to admit the document and stated his reason for doing so: "I'm going to admit P-31 as not having been in [*sic* – a] compilation; therefore, it does not come under [the] purview of 409." (R. 720.) The Louisiana First Circuit Court of Appeal agreed, stating in its opinion, "The evidence was not subject to the shield of 23 U.S.C. § 409." Petition App. 3, n.1. The suggestion that the Louisiana courts erred by refusing to apply § 409 retroactively is wrong.

2. The Highway Needs and Priorities manual is outside the scope of § 409.

23 U.S.C. § 409 applies to "reports, surveys, schedules, lists, or data compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites [or] hazardous roadway conditions . . . pursuant to [certain federal statutes] or for the purpose of developing any highway safety construction improvement project which may be implemented using Federal-aid highway funds," and it prohibits the discovery or admission of such evidence "in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data." The purpose of the statute is to prevent federal aid requirements from becoming "an effort-free tool in litigation against state and local governments." *Pierce County v. Guillen*, 537 U.S. 129, 146, 123 S.Ct. 720, 731, 154 L.Ed.2d 610 (2003).

Because § 409 creates a privilege for otherwise relevant evidence, this Court has held that it must be narrowly construed. *Pierce County v. Guillen*, 537 U.S. at 145, 123 S.Ct. at 730. The burden of proving the applicability of a privilege generally rests with the party asserting the privilege. *von Bulow v. von Bulow*, 811 F.2d 136, 144 (2d Cir.), *cert. denied*, 481 U.S. 1015, 107 S.Ct. 1891, 95 L.Ed.2d 498 (1987); cf. *In re Grand Jury*, 603 F.2d 469, 474 (3rd Cir. 1979) ("To the extent that the record is ambiguous as to the elements which are necessary to establish the claim of privilege, 'The burden of proving that the . . . privilege applies is placed upon the party asserting the privilege,'" quoting *United States v. Landof*, 591 F.2d 36, 38 (9th Cir. 1978)). This is true of the § 409 privilege as well. *Powers v. CSX Transportation*, 177 F.Supp.2d 1276

(S.D. Ala. 2001). And as the court of appeals stated in *In re Bonnanno*, 344 F.2d 830, 833 (2d Cir. 1965), this burden "is not, of course, discharged by conclusory or ipse dixit assertions."

The Highway Needs and Priorities manual does not fall within a literal reading of the scope of § 409 for at least three reasons. The first, and most obvious, reason is that the document does not mention or address any specific location. Evidence is excluded under § 409 only in an "action for damages arising from any occurrence at a location mentioned or addressed" in the document; this prevents litigants from using a highway department's own conclusions about a location, drawn pursuant to federal requirements, against the department in litigation concerning that location. Thus, in every reported case in which evidence was excluded under § 409, the excluded evidence made specific reference to the location that was the subject of the litigation, as the statute requires. For example, in a case cited by petitioner, *Vega v. State*, 10 Misc.3d 822, 823, 804 N.Y.S.2d 229, 231 (Ct.Cl. 2005), the court excluded "evidence concerning the DOT internal classification of the Route 302/Route 17M intersection as a 'dangerous intersection'." In *Pierce County v. Guillen*, 537 U.S. at 136, 123 S.Ct. at 725-26, the evidence at issue concerned accidents at the intersection that formed the basis of the litigation. See also *Reichert v. State*, 96-1419 (La. 5/20/97), 694 So.2d 193 (excluding correspondence concerning a proposed safety improvement project); *Palacios v. Louisiana & Delta R.R.*, 98-2932 (La. 7/2/99), 740 So.2d 95 (excluding inventory information collected about a specific location pursuant to federal statute).

The Highway Needs and Priorities manual does not mention or address any location; it merely explains what

information should be collected and the standards to which that information should be compared. As plaintiffs' expert testified, the manual has nothing to do with "any particular road or any compilation of data of highways in Louisiana." (R. 710.) The Highway Needs summary, which is prepared according to the instructions set forth in the manual, does address specific locations, but the summary was not admitted into evidence. Because the manual does not mention or address any location, it cannot be excluded in any case under the plain language of the statute.

The second reason that § 409 does not apply to Exhibit P-31 is that this document is not the kind of "report[], survey[], schedule[], list[], or data compiled or collected" that is contemplated by the statute. Those terms, while plainly broad, connote a process of acquiring and organizing information concerning locations upon which decisions concerning highway improvement projects are to be based. The statute seeks to prevent litigants from unfairly availing themselves of the work product that results from this federally mandated acquisition and organization. Again, the reported cases excluding evidence under the statute deal with the products of such a process. Thus, in *Walden v. Department of Transportation*, 27 P.3d 297, 304 (Alaska 2001), cited by the petitioner, the court excluded a "design study report" concerning the curve at issue, which the plaintiff agreed was covered by § 409. *Pierce County v. Guillen*, 537 U.S. at 136, 123 S.Ct. at 725-26, dealt with collected information concerning accident history at the location at issue.

The Highway Needs and Priorities manual precedes that process. The manual tells how to collect information and how that information should be evaluated. It is a standards document of general applicability, comparable to the standards published by AASHTO or the Manual on

Uniform Traffic Control Devices ("MUTCD"), except that it is specifically intended for the evaluation of existing roads rather than the design of new roads. The manual certainly contains "safety-related material," but that is not what § 409 excludes.

Petitioner has not cited, and respondents' counsel has not found, any reported case that excludes evidence of standards on the basis of § 409. Indeed, there seems to be little question that standards documents are unaffected by § 409. See, e.g., *Perkins v. Ohio Dep't of Transportation*, 65 Ohio App. 3d 487, 584 N.E.2d 794 (10th Dist. 1989), *cause dismissed*, 57 Ohio St. 3d 612, 566 N.E.2d 673 (1991) (discussing and excluding evidence under § 409, while also considering evidence of standards applicable under the MUTCD). The closest analogous situation was that presented to the federal district court in *Powers v. CSX Transportation*, 164 F.Supp.2d 1299 (S.D. Ala. 2001), where the court found that evidence concerning the Alabama Department of Transportation's computer system, which was used to implement federal-aid projects, was not protected by § 409. The court found that "because Section 409 protects only 'data compiled or collected' for certain purposes and not the *methods* by which data is compiled or collected, the plaintiff may conduct significant discovery concerning [the computer system] without impinging even arguably on Section 409 material." 164 F.Supp.2d at 1301. Because Exhibit P-31 is a standards document that does not contain any information required to be gathered pursuant to federal statutes, it is not within the scope of § 409.

Finally, the record is devoid of any testimonial or documentary evidence establishing the fundamental premise of petitioner's argument, that the Highway Needs

and Priorities manual and program constitute "information compiled or collected for [23 U.S.C.] § 152 purposes, and ... not ... information compiled or collected for purposes unrelated to § 152." *Pierce County v. Guillen*, 537 U.S. at 146, 123 S.Ct. at 731. Section 152 creates a Hazard Elimination Program for state and local roads. The manual does deal with highways, so there is some overlap in the program described in the manual and the highway programs referenced in § 409. But because Cornerview Road was not a federal-aid highway (R. 1132), it was not eligible for general federal funding, and neither § 130 (railroad-highway grade crossings) nor § 144 (bridges) applies. The Hazard Elimination Program of § 152 thus provides the only potential basis for rendering § 409 applicable to this document.[2] Nothing within Exhibit P-31 itself makes any reference to either the Hazard Elimination Program specifically, or any federal funding program generally. Petitioner's employee, Richard Savoie, testified that he was "familiar with the interaction between the states and the federal government as it concerns funds and funding of projects." (R. 1131.) Petitioner's counsel later asked him, "And for what purposes are they [DOTD's needs survey and minimum tolerable conditions] created and used?" Savoie responded:

> It's an evaluation of our system. It's kind of like a snapshot annually to see where we're at. It does incorporated [sic] all of the projects that have been redone. So every roadway that's been reconstructed will show up in that needs survey as meeting the tolerable conditions because they

[2] As petitioner correctly notes, § 409 was amended after the trial to change the reference to § 152 to § 148.

> would have a design speed of 60 m.p.h. or greater. (R. 1139.)

Savoie never mentioned the Hazard Elimination Program, § 152 or any other federal funding in connection with the Highway Needs and Priorities program. Neither did petitioner's retained expert when he was asked about the Highway Needs summary. (R. 1089, 1090.) Petitioner repeatedly asserts this connection (see, e.g., Petition pp. 5, 6, 10, 17, 19), but it failed to introduce any evidence to support that connection. As this Court has held, "[T]here is no reason to interpret § 409 as prohibiting the disclosure of information compiled or collected for purposes unrelated to § 152." *Pierce County v. Guillen*, 537 U.S. at 146, 123 S.Ct. at 731.

Because the Highway Needs and Priorities manual does not mention any locations, is not the type of document contemplated by § 409, and bears no relationship to any of the federal highway aid programs mentioned in the statute, the Louisiana courts properly found that the evidence was not within the purview of § 409.

3. The reasons for judgment show that the admission of the Highway Needs and Priorities manual did not determine the outcome of the case.

Even if the admission of Exhibit P-31 were erroneous, the reasons for judgment show that it did not affect the outcome of this case. The standards set forth in Exhibit P-31 are generally less stringent, and thus more favorable to the petitioner, than the design standards that constituted the bulk of the evidence. The reasons for judgment mention the Highway Needs and Priorities manual only in reference to two conditions on the highway: the design

speed and the degree of curvature. But in both cases, the trial judge found the highway defective because it violated standards that were even more lenient, and thus more favorable to the petitioner, than the minimum tolerable conditions. The judge found that the design speed was worse than not only the minimum tolerable conditions, but also the posted speed limit, which DOTD's own employee testified was improper. (Petition App. 10.) The degree of curvature was not only greater than the minimum tolerable condition of eight degrees; it was greater than the original design of ten and a half degrees. (Petition App. 9.) Given the trial judge's explicit finding that the curve was defective because it violated even the most lenient standards introduced in evidence, it cannot be said that the admission of the more restrictive standards contained in the Highway Needs and Priorities manual, even if erroneous, led to the finding of liability in this case.

4. The petition was apparently filed to delay finality of the judgment in this case.

Petitioner's accusation that the Louisiana courts "ignored" the § 409 privilege has been lodged against a state judicial system that has been a vigilant protector of that privilege. See, e.g., *Long v. State*, 2004-485 (La. 6/29/05), 916 So.2d 87; *Palacios v. Louisiana & Delta R.R.*, 1998-2932 (La. 7/2/99), 740 So.2d 95; *Reichert v. State*, 96-1419 (La. 5/20/97), 694 So.2d 193. The charge is made in a petition for certiorari that (1) fails to attach or even accurately describe the evidence of which petitioner complains; (2) ascribes an incorrect basis for the trial court's decision; (3) calls for broad and even extratextual application of a privilege statute that this Court has unanimously held must be strictly construed; and (4) contends that the

petitioner was prejudiced by the admission of certain evidence, when the judgment against it was based upon evidence that was more favorable to the petitioner than the evidence of which it complains. It appears that, for the second time in recent years, see *Wingfield v. State*, 2001-2668 (La. App. 1 Cir. 11/8/02), 835 So.2d 785, *writs denied*, 2003-0313, -0339, -0349 (La. 5/30/03), 845 So.2d 1059, 1060, *cert. denied sub nom. Louisiana v. Wingfield*, 540 U.S. 950, 124 S.Ct. 419, 157 L.Ed.2d 282 (2003), the Louisiana State Office of Risk Management has filed a petition for certiorari with the primary objective of delaying finality of a large judgment until after the adjournment of an ongoing session of the Louisiana Legislature.

La. C.C.P. article 2166(E) provides that a judgment of a Louisiana court of appeal becomes final and definitive under Louisiana law when the Louisiana Supreme Court denies an application for certiorari. Louisiana Constitution article 12, § 10(C) requires that judgments against the state be paid through legislative appropriation. The 2006 regular session of the Louisiana Legislature began on March 27, 2006, and the Louisiana Supreme Court denied petitioner's application for certiorari on April 17, 2006. The legislature appropriated funds to pay specific judgments in a supplemental appropriations bill, enacted as 2006 La. Acts No. 642; the session adjourned on June 19, 2006. By announcing its intention to petition this Court for certiorari on what was, at best, a collateral issue in this case, the Office of Risk Management effectively prevented the legislature from considering an appropriation to pay this large judgment. Given the merits of the petition, this opportunity to delay finality seems the most likely motivation for this filing.

CONCLUSION

The Court should deny the petition for certiorari.

Respectfully submitted,

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App. 1

Highway Needs
&
Priorities

[Picture Omitted In Printing]

1983

LOUISIANA
prepared by the
DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT
OFFICE OF HIGHWAYS

* * *

CHAPTER II

GENERAL INSTRUCTIONS FOR HIGHWAY NEEDS EVALUATION

NEEDS EVALUATION CONCEPTS

Three major elements of a highway needs study are:

1. Delineation of a functional system plan described in Chapter I.

2. Identification of type and cost of capital improvements for existing and new facilities, based on their presumed (*for study cost estimating purposes only*) location on the ground. The cost of overcoming existing deficiencies (backlog needs) and correcting deficiencies developing during the 20-year study period (accruing needs) is estimated. Deficiencies are determined based on minimum tolerable conditions (below design standards).

   Once a deficiency is identified, the improvement is based on appropriate design standards for forecasted travel 20 years from the deficiency alleviation. This step will be performed annually.

3. Cost estimates for maintenance, prorated administration and stop gap programs are required to provide the total cost picture. These data are not required for developing a construction program or establishing project priorities. Consequently these data will not be estimated annually and would only be developed to fulfill the requirements of a comprehensive highway needs study.

Construction needs are divided into two broad categories: (1) new facilities (i.e. those constructed on new rights-of-way) and (2) improvements to existing facilities. These two categories have some different elements in their respective appraisal techniques.

A standard step-by-step appraisal process is more readily applied to the improvements needed on present facilities than to new facilities. For existing facilities, available information provides: (1) a geometric and physical condition inventory and (2) a comparison, element-by-element, between what exists and yardsticks of tolerability.

The broad categories of deficiency are traffic capacity, alignment, width, and structural (pavement) and drainage condition. The first three of these categories, broadly labeled "geometric", can be developed quite objectively and consistently, in the sense of being readily subject to numerically quantifiable values.

Structural and drainage adequacy require judgmental evaluation. Drainage adequacy, for example, is evaluated in terms of cross-section character (ditches, slopes, curbs, etc.) and height of grade line. These elements provide guidance, as to whether improvement is feasible or whether reconstruction is a more practical alternative. In

the determination of structural adequacy, rough-o-meter and skid resistance studies will be used to supplement engineering judgment.

The basic approach to highway needs evaluation is the minimum tolerable condition approach. Minimum tolerable conditions, the yardsticks to which existing facilities are compared, define acceptable levels for capacity, alignment, width and structural condition that are somewhat below the standards for new construction. The tolerability concept recognizes that it is not realistic to propose an improvement to a facility that provides reasonably good service, even if it is not up to the standard of a new road. The minimum tolerable conditions established for this study reflect a measure of level of service, as outlined in the 1965 *Highway Capacity Manual,* by examining operating speed, and/or, volume/capacity ratios (v/c). In addition, specific geometrics of the needs sections are evaluated in terms of their influence on safety. Minimum tolerable conditions are developed by functional class of highway and by traffic volume group within each class. Design standards for new construction are those standards established by the Department.

Appraising the adequacy of existing facilities involves two major steps, performed in sequence. First, the facility is appraised to see if it meets criteria of tolerability for present traffic. If it does not, it is classified as an existing or "backlog" deficiency. If it is now tolerable, it is appraised for its ability to meet the same tolerability criteria based on projected future traffic. If it does not, it is classified as a future deficiency. Structural deterioration of the pavement must also be considered in evaluating future deficiencies.

Type of deficiency is a key to the type of needed improvement, e.g., resurfacing, widening or reconstruction. Cost estimate will be prepared on a major cost item basis, e.g., right-of-way, surface and base, grading and drainage, etc. These will be developed on an item cost per mile basis and can be aggregated to provide an overall cost per mile value for a given section or segment of roadway. The major cost categories used in this study are right-of-way, grading and drainage, surface and base, structure, other (miscellaneous) and engineering. Costs will be based on the standard required to meet forecast year rather than present traffic.

THE NEEDS APPRAISAL PROCESS

Appraising arterial, collector and other highways requires:

1. Identifying study sections and subsections.
2. Describing existing conditions.
3. Determining the character and degree of deficiencies.
4. Estimating improvements needed to overcome deficiencies.
5. Estimating costs of needed improvements.

Step 1 – Identify Study Section

To analyze needs, the control sections will be used as logical study sections. Basically, a study section is a length of road or street that is relatively homogeneous in geometrics, traffic volume and cross sections, and long enough to be a logical section for needs appraisal.

Step 2 – Describe Existing Conditions

Determine existing conditions on each study section. To the extent possible, it is intended that this be performed as an office operation making use of inventory and condition data which are already available, and supplemented by an annual on-site inspection which recognizes and adjusts to changes from deterioration, improvements, land use, additions to or deletions from the state-maintained system, etc.

When describing existing conditions, additional breaks in the control sections may be needed. The subsection numbering scheme should be used for this purpose.

Step 3 – Determine Deficiencies

After present conditions on each section have been determined, compare them with minimum tolerable conditions to judge present and future adequacy of the section. Minimum tolerable conditions for rural arterials and collectors are given in Table 1. Minimum tolerable conditions for urban arterials are given in Table 2, and those for urban collector streets are in Table 3. (See pages 15-17.)

Initially compare each study section to the minimum tolerable condition using present traffic volumes and conditions. Identify those sections not meeting these conditions. Determine deficient sections on the basis of both structural adequacy and geometric or operational elements; or combinations of elements which do not meet these minimum tolerable conditions. Examples of conditions which place a highway in the critically deficient class are as follows:

1. Peak hour traffic volumes resulting in operating speeds lower or volume/capacity ratios higher than the minimum tolerable conditions.

2. Lane widths narrower than the minimum tolerable width specified.

3. Curves, grades, and sight distance restrictions not meeting the minimum tolerable conditions which result in unsafe conditions.

4. Pavement condition below the minimum tolerable specified.

5. Pavement type below the minimum tolerable specified.

Examine sections which presently are tolerable for their future adequacy by expanding traffic in five-year increments to the forecast year. This factor assumes compound growth. Table 4, Page 18, provides factors for estimating traffic by five-year increments using the annual traffic growth factor.

Use Table 5, Page 19, to determine the adequacy of protective devices at existing railroad crossings and the type of protection to be included in the cost estimate for those additional crossings in the forecast year. It is not necessary to indicate the year of deficiency for crossing protection. Use forecast year traffic in computing the exposure factor (ADT x number of trains).

Table 1

MINIMUM TOLERABLE CONDITIONS FOR RURAL ARTERIALS AND COLLECTORS

Functional Systems	Rural Principal Arterials		Rural Minor Arterials				Rural Collectors							
Current Average Daily Traffic	-All-		Over 6,000		6,000-1,501		1,500 or less		6,000-1,501 [1]		1,500-751		750-301		300 or less	
1. Terrain	F	R	F	R	F	R	F	R	F	R	F	R	F	R	F	R
2. Operating Speed (Peak Hour)	55	50	50	45	50	45	40	40	-	-	-	-	-	-	-	-
3. Surface Type	High [9]		High [9]		Intermediate [8]						Low [7]		Low [7]		Gravel	
4. Lane Width	11		11		11		11		11		10		9		22' Rdway	
5. Shoulder Type [6]	Stab.		Stab.		Stab.		Earth		Earth		Earth		Earth		-	-
6. Graded Right Shoulder (ft.)	8	8	8	8	6	6	6	6	4	4	4	4	2	2	-	-
7. Safe Speed (Design Speed) [2]	65	55	60	50	60	50	60	50	50	45	50	40	50	40	40	35
8. Stopping Sight Distance	550	415	475	350	475	350	475	350	350	315	350	275	350	275	-	-
9. Maximum Curvature	5°	6°	5°	8°	5°30'	8°	5°30'	8°	8°	10°	8°	13°	8°	13°	-	-
10. Maximum Gradient [3]	4°	4°	4°	4°	5°	5°	5°	5°	5°	5.5°	5°	6°	6°	6°	-	-
11. Number of Lanes	[4]		[4]		2		2		2 [1]		2		2		-	-
12. Pavt. Cond.(PSR or Equiv.) [10]	2.6		2.6		2.1		2.1		2.1		2.1		2.1		-	-
13. Railroad Crossing Protection	Refer to Table 5															
14. Structures:																
a. Width (ft.) [5]	Approach Pavement								Approach Pavement							
	+6ft.		+4 ft.		+4 ft.		+4 ft.		+2 ft.		+2 ft.		20'	20'	18'	18'
b. Vertical Clearance (ft.)	14		14		14		14		14		14		14		14	
c. Loading	H-20		H-20		H-15		H-15		H-15		H-15		H-15		H-15	

[1] Rural Collectors with present ADT above 6,000 should be multilane where necessary to maintain peak hour operating speeds of 40 and 35 in flat and rolling terrain respectively.

[2] Approximate speed on which minimum tolerable stopping sight distance, curvature, and gradients are based.

[3] Steeper grades may be considered tolerable if lengths are relatively short or climbing lanes are provided.

[4] As necessary to maintain the operating speed specified.

[5] For bridges over 250 ft. in length, widths 4 ft. less than shown, but in no case less than the width of the approach traveled way, will be considered tolerable.

[6] Stabilized indicates Gravel or other granular material, with or without admixture.

[7] Bituminous Surface Treatment.

[8] Bituminous Concrete, with a combined - surface and base - thickness less than 7 inches.

[9] Bituminous Concrete, Portland Cement Concrete, or brick, with a combined - surf. & Base - thickness over 7 inches.

[10] Value of 2.6 or 2.1 indicates appropriate table (B-1 thru B-4) for EALA comparison.